58 Me. 275. If the bank is not allowed to mix the fund with its general assets, there is a trust. *McLeod* v. *Evans*, 66 Wis. 401, 28 N. W. 173; *Harrison* v. *Smith*, 83 Mo. 210. Deposits for a special purpose, such as security, have often been called trusts. *People* v. *City Bank of Rochester*, 96 N. Y. 32; *Kimmel* v. *Dickson*, 5 S. D. 221, 58 N. W. 561. Whether they are is essentially a question of fact. *Mutual Accident Association* v. *Jacobs*, 141 Ill. 261, 31 N. E. 414; *Anderson* v. *Pacific Bank*, 112 Cal. 598, 44 Pac. 1063. Ordinarily, when money is deposited, the bank may use it as its own. It merely promises to pay over a similar amount when the special purpose is accomplished. *Hill* v. *Smith*, 12 M. & W. 618. In the absence of special circumstances to show that the fund is to be kept intact, the deposit creates only a debt. *Mulford* v. *People*, 139 Ill. 586, 28 N. E. 1096. Thus a deposit to be paid to a third party may be withdrawn before the beneficiary accepts. *Brockmeyer* v. *Washington National Bank*, 40 Kan. 376, 19 Pac. 855; *First National Bank* v. *Higbee*, 109 Pa. St. 130.

BILLS OF PEACE — APPLICABILITY TO NEGLIGENCE CASES. — An explosion in the complainant's mine killed 110 workmen, whose administrators, the defendants, sued the complainant at law under the Employers' Liability Act. The complainant's bill asked to have these suits enjoined, and its liability determined in equity, and damages assessed in equity if it should be found liable. *Held*, that the case is not within equity jurisdiction. *Southern Steel Co.* v. *Hopkins*, 57 So. 11 (Ala.).

Pomeroy's rule that the mere presence of a single issue in many suits against the same person is a basis of equitable interposition has been much disputed. See 1 POMEROY, EQUITY JURISPRUDENCE, 3 ed., § 264, note (b). It receives its severest test when applied to enjoining several suits for injuries caused by a single act of the complainant, for courts hesitate to deny jury trials in such cases. If the complainant presents to the equity court an issue of contributory negligence, or of damages, with each defendant, so that no simplification would result from a single trial, Pomeroy's rule does not apply; but where a single issue is presented, by the complainant's alleging absence of negligence on his part, jurisdiction should be taken. See 1 POMEROY, EQUITY JURISPRUDENCE, 3 ed., § 251½. But courts failing to appreciate this distinction have rejected Pomeroy's rule altogether. *Tribette* v. *Illinois Central R. Co.*, 70 Miss. 182, 12 So. 32; *Ducktown Sulphur, Copper, & Iron Co.* v. *Fain*, 109 Tenn. 56, 70 S. W. 813; *Vandalia Coal Co.* v. *Lawson*, 43 Ind. App. 226, 87 N. E. 47. It is to be regretted that the Alabama court, in overruling a former decision based on Pomeroy's rule, while now recognizing that the case was not within the rule, nevertheless repudiates the rule. Only one opinion adopts Pomeroy's rule in a negligence case. *Whitlock* v. *Yazoo & Mississippi Valley R. Co.*, 91 Miss. 779, 45 So. 861 (tacitly overruling *Tribette* v. *Illinois Central R. Co.*, *supra*).

BOUNDARIES — PAROL AGREEMENT TO ESTABLISH BOUNDARY. — The owner of a lot conveyed a part of it to the defendants by a deed in which the boundaries were described by courses and distances. The vendor pointed out the boundary to the purchaser and the latter erected a house along the line indicated. The plaintiff by mesne conveyances acquired the adjoining portion of the lot and discovered that the established line did not correspond with the deed. The plaintiffs and each of their predecessors had been shown the land prior to their respective purchases. *Held*, that the boundary established by the parol agreement should govern. *Price* v. *De Reyes*, 119 Pac. 893 (Cal.).

A parol agreement between adjoining landowners as to the location of a disputed boundary, followed by acquiescence in possession according to the agreement, is binding. *Steidl* v. *Link*, 246 Ill. 345, 92 N. E. 874; *Tritt* v. *Hoover*, 116 Mich. 4, 74 N. W. 177. If the description in the deed is ambiguous, such an agreement is not within the Statute of Frauds, as it involves no transfer

of title, but merely an application of the language of the instrument. *Blair* v. *Smith*, 16 Mo. 273; *Hagey* v. *Detweiler*, 35 Pa. St. 409. But if the description is clear, the agreement is avoided by the statute, as it involves an actual transfer of land. *Olin* v. *Henderson*, 120 Mich. 149, 79 N. W. 178; *Vosburgh* v. *Teator*, 32 N. Y. 561. Yet it has been held that a line thus marked out and acted upon is conclusive, even when the description is certain. *Helm* v. *Wilson*, 76 Cal. 476, 18 Pac. 604. *Cf. Knowles* v. *Toothaker*, 58 Me. 172. It seems just that the original parties or a purchaser with notice should be estopped to dispute the validity of such an agreement, but it is difficult to see how a purchaser who acted in reliance on the deeds without notice of the agreement could be affected by it. *McKinney* v. *Doane*, 155 Mo. 287, 56 S. W. 304. The principal case may be supported on the ground that the purchasers, having seen the property, had notice of its agreed bounds. *Bartlett* v. *Young*, 63 N. H. 265.

CONSTITUTIONAL LAW — CONSTRUCTION, OPERATION, AND ENFORCEMENT OF CONSTITUTIONS — RIGHT OF COUNTY TO TEST CONSTITUTIONALITY OF STATUTE. — A statute authorized the expenditure of state money for certain roads within certain counties. The plaintiff county sought to restrain the state officers from proceeding under the statute on the ground that it was unconstitutional. The county was not required to contribute in taxes as a corporation, and its property rights were not affected. *Held*, that the county has no legal capacity to sue. *County of Albany* v. *Hooker*, 204 N. Y. 1, 97 N. E. 403.

No person whose rights are not directly affected by a statute can object to its constitutionality. *Clark* v. *Kansas City*, 176 U. S. 114, 20 Sup. Ct. 284. The doctrine is general that, in the absence of a statute imposing the duty on some official, any taxpayer may enjoin the misapplication of public funds by municipal officers, on the ground that the act, in increasing taxation, directly injures him. *Davenport* v. *Kleinschmidt*, 6 Mont. 502, 13 Pac. 249. But where his individual interests are not involved, the taxpayer cannot sue. *Prince* v. *Crocker*, 166 Mass. 347, 44 N. E. 446. Counties are local subdivisions of the state. *Board of Commissioners of Hamilton County* v. *Mighels*, 7 Oh. St. 109. They are not protectors of private interests or property of taxpayers and cannot intervene to prevent injuries to them. See *People* v. *Ingersoll*, 58 N. Y. 1, 29. So a county cannot complain if the state regulates the funds to be raised to pay county debts of a public character. *State ex rel. Dillon* v. *Braxton County Court*, 60 W. Va. 339, 55 S. E. 382; *City Council of City and County of Denver* v. *Board of Commissioners of Adams County*, 33 Colo. 1, 77 Pac. 858. In the principal case, the county in its corporate capacity will suffer no injury, since it is not a taxpayer; and, as the court points out, the public by authorized proceedings should have brought the suit. Clearly if the funds of the county as a corporation, in its possession or to which it was equitably entitled, were being misappropriated, the county could sue. *Bridges* v. *Board of Supervisors of County of Sullivan*, 92 N. Y. 570; *Woods* v. *Board of Supervisors of Madison County*, 136 N. Y. 403, 32 N. E. 1011.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — STATUTE REQUIRING COMMITMENT FOR REFUSAL TO TESTIFY BEFORE LEGISLATIVE COMMITTEE BY JUDGE OF COURT WITHOUT HEARING. — A statute provided that when a witness duly subpœnaed refused without reasonable cause to testify before a committee of the legislature, he might by warrant be committed to jail until he submitted to do so, by a judge of any court of record upon proof by affidavit of the facts. *Held*, that the statute is unconstitutional. *In re Barnes*, 132 N. Y. Supp. 908 (App. Div.).

Notice and an opportunity to be heard are, as a general rule, essential elements of due process of law. See *Simon* v. *Craft*, 182 U. S. 427, 436, 21 Sup. Ct. 836, 839. One apparent exception to the rule, however, has always existed